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10/22/1999

RICHARD ROBERT CAPPADONA

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04/20/2006

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EXAMINER

BECKER, DREW E

ART UNIT

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1761

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/425,436
Filing Date: October 22, 1999
Appellant(s): CAPPADONA ET AL.

MAILED
APR 20 2006
GROUP 1700

Jeffrey A. Chelstrom
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 25, 2006 appealing from the Office action mailed October 25, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct. Dependent claims 21-22 are also presently rejected.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on January 26, 006 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,293,271	Barbour	9-2001
6,004,000	Hupf et al	12-1999
DE 7527182	Bosch	12-1975

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbour [Pat. No. 6,293,271] in view of DE 7527182.

Barbour teaches a cooking device suitable for stovetop waterless cooking comprising a pan (Figure 1, #24), a removable lid with upper and lower surfaces as well as a rim (Figure 1, #26), an aperture through the lid (Figure 8, #74), a removable thermometer extending through the aperture, the thermometer inherently having a display, the

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thermometer having a probe extending down to a height above the rim (Figure 4, #78), Barbour does not recite a knob body (claim 20), a temperature sensing device within the probe (claim 20), the probe being a thin-walled, hollow tube (claim 21), a holder (claim 22), and a retaining member (claim 22). DE 7527182 teaches a cooking device comprising a lid with a knob assembly (Figure 1, #11-12), a thermometer comprising a thin-walled, hollow tube with a temperature sensing device (Figure 1, #16-18), a holder (Figure 1, #12), and a retaining member (Figure 1, #13). It would have been obvious to one of ordinary skill in the art to incorporate the unitary thermometer structure and knob-shaped handle of DE 727182 into the invention of Barbour since both are directed to cooking devices, since Barbour already included a removable thermometer (Figure 4, #78) and a handle (Figure 7, #68), since knob-shaped handles were commonly used as handles on cookware lids as shown by DE 7527182 (Figure 1), since Barbour simply did not describe the thermometer structure in detail, and since the thermometer and knob structure of DE 7527182 combined the handle and temperature sensing functions of Barbour into one unitary component which was still capable of being removed at will by simply removing the knob from the locking nut of DE 7527182 (Figure 1, #13).

3. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbour in view of DE 7527182 and Hupf et al [Pat. No. 6,004,000].

Barbour teaches a method of cooking by placing foods with little or no water in a pan (Figures 12-13, #24), a removable lid with a rim (Figures 12-13, #26), an aperture in the lid which receives a thermometer (Figures 12-13, #74 & 78), a blockable vent (Figures 12-13, #76 & 80), the thermometer including a probe, an inherent display, and the lower

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end of the probe being located above the rim (Figures 12-13, #78), applying heat to the pan bottom (Figures 12-13, #12), and measuring the temperature within the pan (column 6, line 56). Barbour does not recite a knob assembly, a temperature sensing device beneath the aperture, and closing the vent and reducing the heat when the temperature reaches a predetermined point. DE 7527182 teaches a method of cooking by use of a lid with a knob assembly (Figure 1, #12), an aperture holding a thermometer with a temperature sensor beneath the aperture (Figure 1, #16-18). It would have been obvious to one of ordinary skill in the art to incorporate the thermometer structure and knob of DE 727182 into the invention of Barbour since both are directed to cooking devices, since Barbour already included a removable thermometer (Figure 4, #78) and a handle (Figure 7, #68), since knobs were commonly used as handles on cookware lids as shown by DE 7527182 (Figure 1), since Barbour simply did not describe the thermometer details, and since the thermometer and knob structure of DE 7527182 combined the handle and temperature sensing functions of Barbour into one unitary component which was still capable of being removed at will. Hupf et al teach a method of waterless cooking by placing food with little or no water into a pan, placing a lid over the pan, heating the bottom of the pan, measuring the temperature, closing the vent, and reducing the heat (column 6, lines 31-44). It would have been obvious to one of ordinary skill in the art to incorporate the cooking steps of Hupf et al into the invention of Barbour, in view of DE 7527182, since all are directed to methods of cooking food, since Barbour already included cooking food with little or no water (Figures 12-13), since the device of Barbour was expressly built for multiple different cooking techniques

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(abstract), since Barbour teaches employing other additional cooking modes (column 7, line 57), since Barbour already included a temperature sensor, bottom heating, and a vent (Figures 12-13, #12, 78, 80) thus providing the capability for a waterless cooking method to be executed, and since the waterless cooking method of Hupf et al was well known in the art and commonly employed (column 6, lines 31-44).

(10) Response to Argument

A. In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to appellant's argument that each reference was not directed to the same subject matter, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Barbour is directed to a cooking device with a handle, thermometer, and vent which was capable of being used in diverse cooking methods (Figure 1, #24, 26, 74, 78; abstract), DE 7527182 is directed to a cooking device with a unitary knob-shaped handle and thermometer (Figure 1), and

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Hupf et al is directed to a method of cooking by heating with the vent open, closing the vent and reducing the heat at a desired temperature in order to create a partial vacuum (column 6, lines 31-44).

B1. In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Barbour is directed to a cooking device with a handle and separate removable thermometer (Figure 1), while DE 7527182 is directed to a cooking device with a unitary knob-shaped handle with an attached thermometer (Figure 1). It would have been obvious to one of ordinary skill in the art to incorporate the unitary thermometer structure and knob-shaped handle of DE 727182 into the invention of Barbour since both are directed to cooking devices, since Barbour already included a removable thermometer (Figure 4, #78) and a handle (Figure 7, #68), since knob-shaped handles were commonly used as handles on cookware lids as shown by DE 7527182 (Figure 1), since Barbour simply did not describe the thermometer structure in detail, and since the unitary thermometer and knob structure of DE 7527182 combined the handle and temperature sensing functions of Barbour into one unitary component which was still

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capable of being removed at will by simply removing the knob from the locking nut of DE 7527182 (Figure 1, #13).

Regarding claims 20-22, appellant argues that the references do not recite “waterless cooking”. However, claims 20-22 are apparatus claims and this is simply a preferred method of using the claimed apparatus. Furthermore, the recitation “waterless cooking” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Even if the term “waterless cooking” was interpreted to include the process steps in appellant’s specification, the apparatus of Barbour was certainly capable of being used in this manner since Barbour already included cooking food with little or no water (Figures 12-13), since the device of Barbour was expressly built for diverse cooking techniques (abstract), since Barbour teaches employing other additional cooking modes (column 7, line 57), and since Barbour already included a temperature sensor, bottom heating, and a vent (Figures 12-13, #12, 78, 80) thus providing the capability to be used in a so-called “waterless” method.

Appellant argues that the term “waterless cooking” required specific steps such as the use of pressure below atmospheric. However, appellant has not provided a specific definition for the term “waterless cooking”. Therefore, it has been given its

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broadest reasonable interpretation: cooking without any added water. Certainly, the device of Barbour taught cooking foods without adding water by simply baking them (Figure 12-13).

B2. In response to applicant's argument that Barbour did not included a knob-shaped handle with an attached thermometer, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Barbour is directed to a cooking device with a handle and a separate removable thermometer, while DE 7527182 is directed to a cooking device with a unitary knob-shaped handle with an attached thermometer. It would have been obvious to one of ordinary skill in the art to incorporate the thermometer structure and knob of DE 727182 into the invention of Barbour since both are directed to cooking devices, since Barbour already included a removable thermometer (Figure 4, #78) and a handle (Figure 7, #68), since knob-shaped handles were commonly used as handles on cookware lids as shown by DE 7527182 (Figure 1), since Barbour simply did not describe the thermometer structure in detail, and since the thermometer and knob structure of DE 7527182 combined the handle and temperature sensing functions of Barbour into one unitary component which was still capable of being removed at will by simply removing the knob from the locking nut of DE 7527182 (Figure 1, #13).

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C1. Appellant argues that the references do not recite cooking with a method comprising the steps of applying bottom heat to the pan, measuring the temperature, and closing the vent and reducing the heat when a predetermined temperature is reached to cook the food at low temperature and pressure. However, Hupf et al is specifically directed to a method of cooking comprising the steps of applying bottom heat to the pan, measuring the temperature, and closing the vent and reducing the heat when a predetermined temperature is reached to cook the food at low temperature and pressure and states that it was well known (column 6, lines 31-44). It would have been obvious to one of ordinary skill in the art to incorporate the cooking steps of Hupf et al into the invention of Barbour, in view of DE 7527182, since all are directed to methods of cooking food, since Barbour already included cooking food with little or no water (Figures 12-13), since the device of Barbour was expressly built for multiple different cooking techniques (abstract), since Barbour teaches employing other additional cooking modes (column 7, line 57), since Barbour already included a temperature sensor, bottom heating, and a vent (Figures 12-13, #12, 78, 80) thus providing the capability for a waterless cooking method to be executed, and since the waterless cooking method of Hupf et al was well known in the art and commonly employed (column 6, lines 31-44).

Appellant argues that the vent of Barbour could not be sealed properly, and that it would not be capable of producing low-pressure. However, appellant has not provided any factual evidence of this allegation from the Barbour reference. Absent any clear

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evidence to the contrary, the Barbour reference was certainly capable of being sealed to the required degree.

C2. Appellant argues that the references do not teach a vent and an aperture for a thermometer. However, Barbour clearly teaches a vent (Figure 8, #74) as well as an aperture for a thermometer (Figures 12-13, #80).

D. Appellant cites the declaration of Mr. Cappadona which was submitted on January 3, 2002. However, neither the Barbour reference, nor the DE 7527182 reference, had been applied against the claims at that point in time.

D1. Appellant argues that the declaration of Mr. Cappadona provided evidence of commercial success. However, the sales of the product cannot be attributed to only the current claim limitations. It is certainly conceivable that the increased sales of the product could be attributed to the whistling knob features of allowed claims 2-6 and 8-19, none of which are included in the presently rejected claims 20-23. Furthermore, the increased sales could easily be attributed to skill in marketing and salesmanship rather than to any one particular feature of the product.

D2. Appellant argues that there was a long felt need for the product. It states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. See MPEP § 716.04.

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Appellant argues that Mr. Cappadona had not seen the claimed apparatus elsewhere. It include(s) statements which amount to an affirmation that the affiant has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

D3. Appellant argues that the references teach away from the claimed apparatus and method. However, this is clearly not true. The main reference of Barbour is directed to a cooking device with a removable thermometer, vent, separate handle, and bottom heat source. DE 7527182 is directed to a cooking device having a unitary knob-shaped handle that included a thermometer. Hupf et al is directed to a waterless cooking method which required a cooking device including a vent, a thermometer, and a bottom heat source. Clearly, all of the references are directed to the same general cooking components and methods.

Appellant argues that the temperature sensor of Hupf et al measured the temperature of the lid, rather than the interior atmosphere. However, both Barbour and DE 7527182 teach devices with thermometers which extend into the cooking cavity to measure the temperature. Hupf et al states that the temperature of the lid is “directly related” to the temperature of the interior atmosphere (column 7, line 60). Therefore, there would be no need to change the thermometer structure of Barbour, in view of DE 7527182, since they already measure the temperature of the interior atmosphere.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

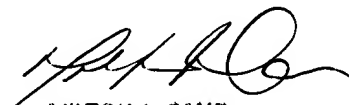
Respectfully submitted,

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